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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
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10 GREENPOINT TECHNOLOGIES, INC.,
11 Plaintiff,

12 vs.

13 HARTFORD CASUALTY INSURANCE
14 COMPANY,

15 Defendant.
16

No. 09-CV-1323 MJP

**RULE 29 STIPULATION AND
PROTECTIVE ORDER RE
DISCOVERY**

17
18 **STIPULATION**

19 Pursuant to Federal Rule of Civil Procedure 29 and in the interest of efficiency and
20 judicial economy, particularly in the interest of avoiding significant ancillary litigation of
21 discovery issues relating to confidential commercial and/or proprietary information, the
22 parties to this litigation do hereby stipulate and agree to this Protective Order and the
23 procedures set forth herein for designating and protecting confidential commercial and/or
24 proprietary information. The parties stipulate as follows:
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1 1. The Documents may contain or refer to sensitive confidential commercial
2 and/or proprietary information, including but not limited to business models, rate and
3 pricing information, customer or marketing information and other similar confidential
4 commercial and/or proprietary information. If disclosed other than as provided in this
5 Protective Order, such proprietary and confidential information could result in unfair
6 competitive advantage. In order that the parties may obtain evidence in this case, it is
7 necessary to make such Documents and discovery available to counsel of record and
8 others while protecting each party against unnecessary disclosure of proprietary and
9 confidential information. Consequently no Documents or discovery or copies of
10 Documents or discovery designated confidential by this order shall be delivered to any
11 person except as provided in paragraphs 6, 8 and 9. Neither the contents nor substance
12 of any such document or discovery shall be revealed except to persons authorized by
13 paragraphs 6, 8 and 9 of this Order. Upon execution of this Stipulation, and without
14 further order of the Court, defendant shall produce all Documents and materials
15 responsive to plaintiff's discovery requests and withheld from production on the basis of
16 their claimed confidentiality, and both parties shall comply with this Stipulation. All
17 persons bound by this Protective Order shall maintain the confidentiality of designated
18 Documents and materials, both during and after disposition of this case.
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23 2. As used in this Protective Order, the term "CONFIDENTIAL" is defined as
24 follows:
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1 a. Any Document that contains non-public commercial and/or
2 proprietary commercial information of a party or non-party, the disclosure of which could
3 result in competitive harm to the producing party or non-party (the Designating Person”),
4 and is marked as such by stamping the cover or first page of each such Documents with
5 the word “CONFIDENTIAL”. All copies of materials so marked shall also be stamped
6 “CONFIDENTIAL” if the duplicating process by which copies are made does not
7 reproduce the original stamp. The person designating Documents as “CONFIDENTIAL”
8 shall be deemed the “Designating Person” for purposes of this Protective Order.
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10 Provided however that any “Document” publicly available prior to such designation may
11 not be designated as “CONFIDENTIAL”. If any document so designated becomes
12 publicly available through no fault of a recipient of such Document pursuant to this
13 Order, then the document will lose its “CONFIDENTIAL” status.
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16 b. Any deposition of portion or any deposition designated by any
17 person as “CONFIDENTIAL” at any time during the deposition or upon the conclusion
18 of the deposition, as set forth below. Any depositions so designated shall be marked
19 “CONFIDENTIAL” by the court reporter on all transcripts and on the original.
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21 c. Documents or testimony designated as “CONFIDENTIAL” are
22 expressly subject to this Court’s ruling on their confidentiality.
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24 3. Nothing in this Order shall require any person to treat as
25 “CONFIDENTIAL” any material or information which has not been so designated in
26 accordance with this Order. In the event that a party or non-party inadvertently fails to
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1 stamp or otherwise designate a document or other material as “CONFIDENTIAL” at the
2 time of its production, that party or non-party may at any time thereafter stamp or
3 otherwise designate the document or other material as “CONFIDENTIAL”. The delay in
4 designating a document as “CONFIDENTIAL” shall not be deemed to have effected a
5 waiver of any of the protections of this Order.
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7 4. The Court Orders that each Designating Person shall exercise caution in
8 designating any Document or portion of a deposition as “CONFIDENTIAL”. This
9 category shall be reserved for Documents which contain information that would be of
10 benefit to the Designating Person’s competitor(s) or otherwise injurious to the
11 designating person’s commercial interests.
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13 5. Each designating Person may orally designate as “CONFIDENTIAL” any
14 testimony during the course of a deposition that refers or relates to a “CONFIDENTIAL”
15 document or “CONFIDENTIAL” information, in which case the court reporter shall
16 transcribe the testimony so designated in a separate volume marked “CONFIDENTIAL”.
17 Counsel for all parties will receive copies of all answers, Documents and testimony
18 designated “CONFIDENTIAL” or otherwise for their use. In any event counsel shall
19 have 15 days after receiving a deposition transcript to designate pages of the transcript
20 (and Exhibits thereto) as “CONFIDENTIAL”. If no party’s counsel timely designates
21 confidential information in a deposition in the manner described above, then none of the
22 transcript or its exhibits will be treated as confidential. For the sake of convenience, the
23 parties may agree to treat as “CONFIDENTIAL” material the entirety of any transcript in
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1 which confidential Documents or information have been discussed or attached as
2 exhibits.

3 6. “CONFIDENTIAL” material (until such time as this Court rules on the
4 question of its confidentiality, if any, and that appropriate treatment to be afforded
5 confidential material) may be used solely for the purposes of this litigation and may be
6 disclosed solely to the following qualified persons:
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- 8 a. Named parties and their employees, representatives and agents;
- 9 b. Attorneys, including both outside and in-house counsel, for any
10 party engaged in the litigation and employees of such attorneys assisting in
11 the litigation;
- 12 c. Personas expressly retained to assist such party’s counsel in the
13 preparation of this action for trial, including expert witnesses;
- 14 d. Persons necessary to the preparation of Documents or transcription
15 of testimony, and persons to whom any such document has previously been
16 disclosed;
- 17 e. The author or a prior recipient of the documents; and
- 18 f. This Court and/or the trier of fact.

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22 “CONFIDENTIAL” material shall not be disclosed to any other person absent consent of
23 the Designating Person or further order of the Court. Nothing herein shall be construed
24 to prevent this Court from disclosing any facts relied upon in making any evidentiary
25 rulings, rulings on motions, or order of whatever description.
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1 7. Before disclosing “CONFIDENTIAL” material to any person falling within
2 categories 6a., 6c., 6d. or 6e. above, counsel for the party making such disclosures shall
3 advise such person in writing not to disclose any “CONFIDENTIAL” materials to any
4 other person and that, if the person does disclose such “CONFIDENTIAL” material, the
5 person may be subject to the sanctions of this Court. Counsel for the party making such
6 disclosure may satisfy this notice requirement by providing a copy of this Order to any
7 party to whom “CONFIDENTIAL” material is to be disclosed.
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9 8. If a non-disclosing party wishes to use “CONFIDENTIAL” material to
10 support or oppose a motion or at trial, that party shall use its best efforts to give the
11 disclosing party fourteen (14) days advance notice of the specific materials or
12 information it intends to submit to the Court so that the disclosing party has the
13 opportunity to move the Court to accept such “CONFIDENTIAL” material for filing
14 under seal. If such a motion to seal is filed, the non-disclosing party shall not file any
15 “CONFIDENTIAL” information addressed by the motion to seal until that motion is
16 resolved, but instead shall refer to the exhibits in the motion to seal. If not feasible to
17 give the disclosing party advance notice of the intent to submit “CONFIDENTIAL”
18 material, the non-disclosing party shall submit to the court a motion to seal pursuant to
19 Local Rule W. D. Wash. 5(g) contemporaneous with the filing of the
20 “CONFIDENTIAL” materials and shall adhere to all requirements of CR 5(g)(3)-(6).
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1 9. “CONFIDENTIAL” material may be used in connection with the
2 examination by deposition of any witness. Whenever “CONFIDENTIAL” material is so
3 disclosed in a deposition, the party making such disclosure shall inform the witness, on
4 the record, that the use of such “CONFIDENTIAL” material is subject to the terms of this
5 Protective Order and the witness is bound by the terms of this Protective Order. If any
6 person present at the deposition, other than the reporter and witness, does not come
7 within the categories of persons defined in paragraphs 6a through 6e of this Order, then
8 that person shall not continue to be present while this “CONFIDENTIAL” material is
9 used during the deposition.
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12 10. The provisions of this Protective Order shall continue in effect unless or
13 until modified by this Court in a future order (which is expressly contemplated by the
14 terms of this protective order) or until expressly released by all parties. Upon final
15 determination of the subject litigation, each party will return to the other or destroy (at the
16 election of the Designating Person) all “CONFIDENTIAL” material in its possession and
17 control and all copies of materials deemed by this Court in a future order to be
18 confidential or which have been treated as confidential by the parties, except that copies
19 of papers filed with the Court may be retained by any party or counsel. In the event the
20 Designating party elects to request destruction of the “CONFIDENTIAL” material, then
21 counsel for the receiving party shall certify the destruction and provide a copy of the
22 certification to the Designating Party. Counsel for each party shall be entitled to retain all
23 pleadings, motion papers, legal memoranda, correspondence and work product.
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1 11. In the event a party is subject to a discovery request or subpoena from a
2 nonparty calling for the production of Documents produced by another party designated
3 “CONFIDENTIAL”, then notice of such shall be given to the producing party. The
4 producing party shall have the obligation of bringing on a motion for relief or direction
5 from this Court. Absent such a motion or action by the producing party, the other party
6 may comply with the discovery requests or subpoena including the production of the
7 “CONFIDENTIAL” materials.
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10 12. Any party may petition the Court for relief from the terms of this
11 Stipulation and Protective Order or for a court order that particular document or
12 documents are not CONFIDENTIAL. On any such motion, the party claiming that a
13 document should maintain its confidential status shall have the burden of proof and there
14 is no presumption that any documents should be confidential because a party has
15 designated it as such. Likewise, there shall be no presumption that the terms of this
16 Stipulation and Protective Order should not be revised.
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18 DATED this 4th day of March, 2010.

19 RHODE & VAN KAMPEN PLLC
20

21 _____
22 Al Van Kampen, WSBA #13670
23 Gregory G. Schwartz, WSBA # 35921
24 Attorneys for Plaintiff Greenpoint Technologies, Inc.

25 FORSBERG & UMLAUF, P.S.

26 _____
27 John P. Hayes, WSBA # 21009
Martin J. Pujolar, WSBA #36049
Attorney for Defendant Hartford Casualty Insurance Company

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2 **ORDER**

3 It is hereby ORDERED that the foregoing Protective Order be and hereby is
4 ENTERED, this 5th day of March, 2010.

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7 Marsha J. Pechman
8 United States District Judge

9 *Presented by:*

10 FORSEBERG & UMLAUF, P.S.
11

12 _____
13 John P. Hayes, WSBA # 21009
14 Martin J. Pujolar, WSBA #36049
15 Attorney for Defendant Hartford Casualty Insurance Company

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18 Al Van Kampen, WSBA #13670
19 Gregory G. Schwartz, WSBA # 35921
20 Attorneys for Plaintiff Greenpoint Technologies, Inc.
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